IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4311 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PRAVINBHAI KHIMJIBHAI THACKER

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4311 of 2001

MR HR PRAJAPATI for Petitioner

MR HL JANI, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 26/07/2001

ORAL JUDGEMENT

1. Heard Mr.H.R.Prajapati, learned advocate for the petitioner, Mr.H.L.Jani, learned AGP for the respondent Nos.1 to 3 and Ms.P.J.Davawala, learned advocate for the respondent No.4.

2. In the present petition, the petitioner has

challenged the order of detention dated 18/4/2001 passed by the District Magistrate, Kachchh-Bhuj under the provisions of Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 (hereinafter referred to as "the P.B.M. Act). The petitioner had been initially detained in Spermatia Central Jail and later on, transferred to the Mehsana District Jail. The ground of detention has been communicated under Section 8(1) of the Act to the petitioner by the detaining authority. The respondent Nos.1, 2 and 3 have not filed any reply, but the respondent No.4 has filed affidavit-in-reply.

3. Mr.H.R.Prajapati, learned advocate for the petitioner has challenged the detention order on various grounds. The learned advocate for the petitioner has also submitted that considering the order of detention itself and ground of detention, the subjective satisfaction is required to be satisfied, which is not established from the record. The learned advocate for the petitioner has also submitted that very purpose of passing the detention order is to restrain the detenu from doing illegal activities contrary to the provisions of Essential Commodities Act. Mr.Prajapati has submitted that Section 3(1)(b) requires to be satisfied prior to passing the detention order to the effect that the petitioner must have indulged in such activities and, there was no material with the detaining authority, on which the detaining authority could have come to the conclusion that the petitioner has committed any of the acts, with a view to making gain. It is also submitted that making of gain is not reflected anywhere either in the order of detention passed by the detaining authority or in the grounds of detention supplied to the petitioner. Therefore, when this important aspect is missing, in the result, the detention order is to be set aside. Mr.Prajapati has further submitted that the order of detention passed by the detaining authority suffers from total non-application of mind. In the ground of detention, it is alleged that on 28/3/2001, on the basis of the information received, a raid was conducted at the business premises of the petitioner. From the compound of the petitioner, certain stock of Wheat, Rice, and Levy Sugar was found out. At the time of inspection, persons of petitioner's firm namely (i) Ashokbhai Prabhuram Thakkar and (ii) Vinod Mohanbhai Patel were found present. At the time of inspection, the petitioner was not present at his business place and he was out of station for his business work. When the petitioner returned back, his statement dated 9.4.2001 was recorded wherein the petitioner has disclosed that the stock of

essential articles found from the business place of the petitioner belonged to one Shri Jagshi Chatrabhuj Mehta and as he requested for storing his stock of essential articles temporarily, the petitioner allowed him to do so and in absence of the petitioner, he put his stock of essential articles in the business premises of the petitioner. The petitioner submits that the Investigating Officer made no serious attempt to find out Shri Jagshi Chatrabhuj Mehta and submitted his report that there is no such person known as Shri Jagshi Chatrabhuj Mehta. It is submitted that the Investigating Officer did not seriously try to find out the person known as Shri Jagshi Chatrabhuj Mehta. It is not the case of the detaining authority that the address given of such person is false and fake and no such person is residing at the said address. It is submitted that the petitioner has stated everything in his statement dated 9.4.2001 as to how he allowed the said person to put his stock of commodities in the premises of the petitioner. The petitioner had also stated the name of person who put the said stock and also given his address. The petitioner submitted that the said fact was disclosed by petitioner on 9.4.2001. On the basis of the said information, the Investigating Officer went to the house of Shri Jagshi Chatrabhuj Mehta situated at 12, Gayatri Society, Madhapar (Oldvas), Taluka Bhuj. As the said person was not fund at his residence, a summons was served upon one Ranjanben Amrutlal on behalf of the said person. This shows that person known as Shri Jagshi Chatrabhuj Mehta is residing at the address disclosed by the petitioner and on his behalf Ranjanben Amritlal had received the summons issued by District Supply Officer. Merely because the said person was not found out on 10.4.2001 at his residence and since he did not appear thereafter before Investigating Authority though summons was issued on his name, it is no ground to disbelieve the say of the petitioner and to allege that the detaining authority has considered three following aspects for believing that there is no person known as Shri Jagshi Chatrabhuj Mehta:

(i) Upon inquiry from the residence of Shri Jagshi Chatrabhuj Mehta, he was not found out and though his family members were informed, he has not come forward to give his statement.

(ii) Letter dated 10.4.2001 of Mamlatdar, Bhuj informing that Shri Jagshi Chatrabhuj Mehta Chatrabhuj Mehta is not holding any licence under Essential Commodities Act.

(iii) Letter dated 11.4.2001 of Agricultural Produce Market Committee, Bhuj informing that in the list of licence holders of the Committee, neither the name of Shri Jagshi Chatrabhuj Mehta is registered nor such named firm is registered nor there is an officer or godown of such name.

4. The learned advocate for the petitioner has also submitted that on the basis of the aforesaid three factors, the detaining authority has presumed that the said stock of essential articles belonged to the petitioner and thus, in connivance with the employees of the said firm, acted in a manner prejudicial to the maintenance of supplies of such commodities. The petitioner is the owner of such goods is absolutely imagination on the part of the detaining authority. The detaining authority did not wait till the matter is fully investigated by the Investigating Authority. The detaining authority has not made any attempt to verify the fact whether such person namely, Shri Jagshi Chatrabhuj Mehta is in existence or not and he believed the same only on the basis of one visit made by the DSO, Bhuj on 10.4.2001. Mr.Prajapati has also submitted that the detaining authority ought to have called for further information to verify the fact whether such person is in existence or not and that could have also been verified from the list of voters available in his own office. It is also submitted that no reasonable prudent person would come to such conclusion on the basis of the material available which is arrived at by the detaining authority and, therefore, the subjective satisfaction of the detaining authority suffers from total non-application of mind and, therefore, the same is required to be quashed and set aside. Mr.Prajapati has also submitted that after the detention order was passed against the petitioner, the person known as Shri Jagshi Chatrabhuj Mehta was found out and the petitioner has learnt that the order of detention under the P.B.M. Act is also passed against him. It is also submitted that while the petitioner was in detention in Spermatia Central Jail in pursuance of the order of detention passed against him, between 22.4.2001 and 27.4.2001 Shri Jagshi Chatrabhuj Mehta had visited the Jail and met the petitioner. Therefore, by the written application dated 7.5.2001, the petitioner requested the Jail Superintendent, Spermatia Central Jail, Ahmedabad to provide him the certificate as to exactly on which date the said person visited the petitioner. Below the said application, the Jail Superintendent has made endorsement that if Board will demand, this office will sent the same. The learned advocate for the petitioner has further submitted that

from the above stated facts, it is clear that a person known as Shri Jagshi Chatrabhuj Mehta is in existence. Therefore, instead of making further inquiry from him, to continue the detention of the petitioner is violative of Articles 14, 19 and 21 of the Constitution of India. Mr.Prajapati has also submitted that inspite of coming to know about such facts, the State Government has failed to review the case of the petitioner and, therefore, such action of the State Government is violative of Article 14 of the Constitution of India. The learned advocate for the petitioner has also submitted that other two persons who were detained along with the petitioner, their detention orders are revoked by the State Government. It is also submitted that on the ground of parity, the order of detention passed against the petitioner is also required to be set aside.

6. Mr.H.L.Jani, learned AGP for the respondent Nos.1, 2 and 3 has submitted that the facts, which have been given by the petitioner to the concerned authority, are found to be incorrect in respect to storing the essential articles and, therefore, the order of detention has rightly been passed by the detaining authority. Mr.Jani has also submitted that one Shri Jagshi Chatrabhuj Mehta was not found, whose name has been given by the petitioner alleging that the essential articles belonged to Shri Jagshi Chatrabhuj Mehta. Considering the statements and other materials, the detaining authority has rightly passed the order of detention under Section 3(1) of the P.B.M.C.Act. Mr.Jani has also submitted that there were compelling circumstances to pass the detention order, otherwise the activities, which have been carried out by the petitioner, are likely to adversely affect the society at large. Therefore, the order of detention passed by the detaining authority is legal and valid, which does not require any interference by this Court.

7. Ms.P.J.Davawala, learned advocate for the respondent No.4 has supported the submissions of learned AGP Mr.Jani for the respondent Nos.1, 2 and 3 and has also submitted that the order of detention has rightly been passed by the detaining authority and the provisions of Essential Commodities Act have been violated by the petitioner and representation has rightly been rejected by the respondent No.4. Therefore, the learned advocate for the respondent No.4 has also submitted that in such facts and circumstances and material on record, the order of detention is legal and valid and the same does not require any interference by this Court.

8. I have considered the submissions of all the learned advocates. The fact remained that in the ground of detention, only material, which has been pointed out by the detaining authority against the petitioner is to the effect that some essential articles were found in the premises of the petitioner at the time of inspection carried out on 28/3/2001, when the petitioner was out of station. The inspection was carried out in the presence of two employees of the petitioner, namely, Ashokbhai Prabhuram Thakkar and Vinod Mohanbhai Patel. The fact has been disclosed to the concerned authority that these essential articles are belonging to one Shri Jagshi Chatrabhuj Mehta and not belonging to the petitioner. The reasons given by the petitioner that on account of the Earthquake the godown of Shri Jagshi Chatrabhuj Mehta was damaged and he was not able to store the essential articles in the godown. Therefore, he requested to the petitioner to shift the essential articles in the premises of the petitioner and the petitioner has permitted Shri Jagshi Chatrabhuj Mehta to shift these essential articles in his premises for some period. Meanwhile, the inspection was carried out by the concerned Authority. This fact has been disclosed by the petitioner in his statement made before the concerned authority. Not only that but two employees of the petitioner has also disclosed the some facts to the concerned authority. In reality, the petitioner is having different business and not the business relating to the essential articles. Therefore, looking to the facts and after considering the materials, ultimately, the detaining authority has come to the conclusion as per the ground of detention to the effect that the present petitioner and his two employees kept the essential articles without any authority and suppressed the true facts which are violative of the provisions of Essential Commodities Act and, therefore, just to restrain him from doing such activities, the order of detention has been passed by the detaining authority. The inquiry was carried out by the Mamlatdar, Bhuj and it was found that Shri Jagshi Chatrabhuj Mehta was not having any licence about the essential articles and no firm has been registered in his name and, therefore, the allegation has been made against the present petitioner that he is making of gain by selling these essential articles to the society and, therefore, the order of detention has been passed by the detaining authority. I have considered the grounds of detention as a whole. Except the fact that the essential commodities are lying in the godown of the petitioner, there was no other evidence, which has been collected by the concerned authority that any of the item of the essential commodities have been sold by the

present petitioner or by his employees to the people by taking some more amount and made a profit or gain from selling these essential articles. There was no such serious incident pointed out by the detaining authority in the grounds of detention. To keep the essential commodities in the godown of the petitioner itself is not enough to pass the detention order against such person. It is also necessary to note that two employees of the present petitioner namely Ashokbhai Prabhuram Thakkar and Vinod Mohanbhai Patel, against whom the order of detention has been passed by the detaining authority, but having the favorable opinion from the Advisory Board, the order of detention has been revoked by the State Government. It is also necessary to note that there was no past history against the present petitioner which has been pointed out by the detaining authority in the ground of detention. The second important fact which is established from the record is that the detaining authority has not seriously inquired about the existence of Jagshi Chatrabhuj Mehta, but has merely relied upon the letter of Mamlatdar, Junagadh to the effect that no such person is in existence and no license is there and no firm is there in his name. Mr.Prajapati, learned advocate for the petitioner has submitted that subsequent to the detention order, on inquiry, the letter of Mamlatdar, Junagadh has been found to be incorrect by the concerned authority and as a result thereto, the order of detention has been passed against Jagshi Chatrabhuj Mehta by the detaining authority on 21/5/2001. In light of the above fact, the order of detention, which has been passed against the present petitioner by the detaining authority is prima facie not just and does not satisfy the requirements of the relevant provisions of Section 3(1) of the B.P.M.Act. In reality and substance, no activities have been carried out by the petitioner which were violative of the relevant provisions of Essential Commodities Act. No doubt, just with a view to help one Jagshi Chatrabhuj Mehta petitioner kept the essential articles in his godown, which does not adversely affect the society. According to my opinion, the order of detention is prima facie bad in law and was not required to be passed by the detaining authority. It is duty of the detaining authority to satisfy that the activities which have been carried out by the detenu are adversely affecting the society and the essential commodities have been sold to the people by taking some more amount. Real black marketing is required to be established from the record. Here the real ingredients are not satisfied, looking to the facts which are not disputed from the record. The subjective satisfaction of the detaining authority must be based on material. If the material is

lacking then subjective satisfaction cannot be established from the record. In the present case, except the finding of the material of essential commodities or articles in the premises of the petitioner, there was no adverse material on record which required to pass an order of detention. Therefore, in light of this undisputed fact from the record and looking to the ground of detention, the conclusion of the detaining authority prima facie is not correct and does not satisfy the subjective satisfaction because subsequently, against Jagshi Chatrabhuj Mehta, the order of detention has been passed by the detaining authority, relying upon this very fact by the order of detention dated 21/5/2001. If the order of detention passed against Jagshi Chatrabhuj Mehta is legal and valid, then naturally the order against the present petitioner is not legal and valid, because, both the orders are passed by the detaining authority considering one fact that essential articles are lying in the premises of the petitioner which belong to Jagshi Chatrabhuj Mehta. If the essential articles belong to Jagshi Chatrabhuj Mehta and they were found in the premises of the present petitioner, then the order of detention passed by the detaining authority against the present petitioner is not legal and valid because subsequently the fact, which has been submitted by the petitioner and disclosed by the petitioner, is found to be correct on that basis. After inquiry, the order of detention has been passed against Jagshi Chatrabhuj Mehta on 21/5/2001. Therefore, in view of this fact, it is necessary to consider the view taken by the Hon'ble Apex Court in the Case of Bannalal Vahilda Chavla v. Union of India and others, reported in (1999) 6 Supreme Court Cases 210. The relevant observations of the aforesaid judgment made by the Hon'ble Apex Court in para-(5) are quoted as under :-

"5. As mentioned in the grounds of detention the petitioner is having a sugar candy factory and he has been purchasing kerosene, for use in his factory, from M/s.Purvi Petroleum since a long time. From what is stated in the grounds of detention and the reply-affidavit filed by the District Magistrate it becomes clear that the satisfaction of the District Magistrate that the petitioner was in collusion with M/s Purvi Petroleum was based upon only two circumstances, namely, (1) the petitioner had been purchasing kerosene from M/s.Purvi Petroleum since a long time and (2) the kerosene which was found in the petitioner's possession on 4-7-1998 was sold under the bills as free sale white kerosene.

> There was no material before the District Magistrate to show that sufficient quantity of white kerosene was not available in the market in or about July 1998 and that M/s.Purvi Petroleum was not authorised to sell white kerosene. The petitioner had paid the market price for purchasing kerosene. The whole quantity of kerosene was purchased @ Rs.9 per litre and not at the subsidised rate at which blue kerosene was sold. It is also nobody's case that the bills issued by M/s.Purvi petroleum did not reflect the correct quantity sold and the correct price charges. In view of these facts and circumstances and in the absence of any material to show that the petitioner in fact knew that blue-coloured kerosene was sold at subsidised rates and that it was meant for distribution only amongst weaker sections of the society for cooking and illumination purposes, it is difficult to appreciate how the District Magistrate could have genuinely satisfied himself about any collusion between the petitioner and M/s.Purvi Petroleum. It may be that M/s.Purvi Petroleum was dishonestly selling blue-colured kerosene to those not entitled to it and was thus indulging in black marketing of blue coloured kerosene; but there was hardly any reason for the petitioner to collude with it. There was no necessity for him to do so. There was also no material before the detaining authority to show that the petitioner had in the past committed any illegal act as regards possession, storage and use of blue-coloured kerosene. All these relevant aspects were not considered by the District magistrate before passing the detention order. Therefore, the satisfaction arrived at by him cannot be said to be reasonable and genuine. An order of detention passed upon such vitiated satisfaction deserves to be set aside."

9. In view of the observations made by the Hon'ble Apex Court in above referred case and considering the facts of the present case, according to my opinion, the detaining authority has not considered all the relevant aspects before passing the detention order. It is duty of the detaining authority to inquire about the fact which has been disclosed by the petitioner to the effect that these essential commodities and articles belong to Jagshi Chatrabhuj Mehta. Merely making some formal inquiry has no meaning, but he should have to inquire seriously about these facts and then he should have

considered the case of the petitioner. But the detaining authority has relied upon some material to the effect that no license has been registered in the name of Jagshi Chatrabhuj Mehta, which is not enough because the contents of letter of Mamlatdar, Junagadh had been subsequently found to be incorrect from the record, which resulted in the order of detention against Jagshi Chatrabhuj Mehta dated 21/5/2001. In the ground of detention, except the allegation of storing of essential commodities in the premises of the petitioner, no other activities have been pointed out which relate to the provisions of the B.P.M.Act. Therefore, according to my opinion, the satisfaction arrived at by the detaining authority, cannot be said to be reasonable and genuine. Therefore, the order of detention, based upon such vitiated satisfaction, deserves to be set aside.

10. For the aforesaid reasons, the petition succeeds and the same is allowed. The order of detention dated 18/4/2001 is vitiated and resulted in quashing and set aside the same. The detenu Shri Pravinbhai Khimjibhai Thacker, who has been detained at Mehsana District Jail, be set at liberty forthwith, if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct service is permitted.

[H. K. Rathod,J.]

V.R.Panchal